

TANZANIA / JUDGMENT

ahmada salum kindamba vs musa njengo and others 2021 tzhclandd 136 31 march 2021

COURT
TANZLIIDECIDED
31 March 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM MISC. LAND CASE APPLICATION NO. 559 OF 2018 (Originating from the decision of the
District Land and Housing Tribunal for Coast Region at Kibaha in Land Appeal No. 142 of 2013
delivered on 08th September, 2014) AHMADA SALUM KIN DAM B A
S;/'.....APPLICANT VERSUS MUSA NJENGO.....H k ,.....3,..3& I|RESPONDENT
EDIMUNDI RAFAEL ERNEST..... SND RESPONDENT HEVARIST SHAYO..... 3rd
RESPONDENT Date of Last Order: 24/p2£2021'&'X Date of Ruling: 31/03/2021 ^ v k S.M K A LU N ^
K IJ pertains to an application for leave for the applicant to appea^against|the decision of the
decision of the District Land and H ou^ ^ Egi»ial for Coast Region at Kibaha ("the tribunal") in
Land Appeal No. 142 of 2013 delivered on 08th September,

2014. The application is preferred under section 38 (1) of the Land Disputes Court Act, Cap. 216
R.E 2019 and 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2019. In support of the
application, the applicant, AHMAD SALUM KINDAMBA, filed an affidavit. i In response, the
respondent filed a counter affidavit which denied all the allegations in the application and
the prayer that the application be dismissed for lack of merit. Hearing of the application
was conducted through written submissions. The applicant submissions were drawn and
filed gratis by Yuaja E. Balankiliza, learned advocate, whilst the third respondent fended
himself. The 1st and 2nd respondents did not file their submissions, so the case proceeded
exparte againts them. The facts of this case are that, in|2013 Leant filed Land Application
No. at the Kong^fe^Wal^^TrilDunal for unlawful trespassing into his land by t^ie
resjxindert^^he Kongowe Ward Tribunal decided in favouPof the^re^iiflents^ Aggrieved by
that decision he filed Land wppeapNo. 14|kof 2013 before the District Land and
Housintf^buqa] for Coast Region at Kibaha. In its decision, deljff^febn M^Septeml^r, 2014,
the tribunal decided in favour&of4he resp0ndents.% is this decision which the applicants
seek^) c h a ll^ ^ ^ ^ ^ h is Court. Unfortunately, he was out of time fence this% pliSion. V
M As noted&aiove the application is preferred under section 38

- (1) of Cap. 216. In accordance with that section a person aggrieved by the decision of the tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty (60) days after the date of the decision appeal to the High Court. For ease of reference 38 reads: "(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court: Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.
- (2) Every appeal to the High Court shall be by way of petition and shall be filed at the District Land and Housing Tribunal from which the appeal is brought.
- (3) Upon receipt of the petition, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the relevant documents in the Ward Tribunal to the District Land and Housing Tribunal. "I emphasize mine] ? accordance with section 38(1) an appeal to the High Court must be filed within 60 days. However, section allows for extension of time on demonstration or presentation "good and sufficient cause" for the delay in filing the appeal. From the record it is clear that the decision of the tribunal sought to be challenged was delivered on 08th September, 2014. In accordance with section 38 (1) cited above, the clock started ticking on 09th September, 2014, the next day after the decision was made. The applicant had 60 days within which to file his appeal. He was late to do so and hence he filed the present application. In light of the above set of facts, the main issue for my determination is whether the present application is merited. Alternatively, the question would be whether the applicant has been able to demonstrate "good and sufficient cause". Let me now focus on ascertaining whether the applicant has been able to surmount this hurdle. 5K, The position of the law is that the extension of time must be stated in the affidavit in support of the application and not otherwise as stated in Kalunga and Co. Advocates v/Nalibank Bank of Commerce Ltd (124 of
- 2005) [2006] TZCA 8:7 (23 February 2006 TANZLII) and Ludger Bernad Nyoni v National Housing Corporation (Civil Appl No.372/01 of 1st [2014] S # 54; (06 May 2019 TANZLII). Mindful of the position of the law, I will now turn to the affidavit to see, whether there are grounds advanced by the applicant; careful observation of the affidavit filed in support of the application reveals that, the applicant advanced three main reasons for the delay. Firstly that he was sick and hence failed to follow-up and file the appeal in time. Secondly, that the delay was occasioned by the delay in being supplied with copies of judgment and decree of the tribunal. Thirdly, that there is illegality in the decision of the decision. 4 In support of the first ground, the applicant alleged that whilst awaiting a typed decision of the tribunal he got sick and went on to attend medical treatment before traditional healers. The treatment went on from 2014 to the end of 2016 when he recovered and made efforts to obtain the copies of the decision. Indeed sickness is a good ground which may be advanced by the applicant to convince the Court to exercise its discretion in granting

a^rayer for extension of time. However, for that ground to hold>water^there must be some materials or plausible explanation to\s.uppprt the|argument. Mere allegations of sickness which are&npt suj inay not be sufficient. A look into the applicant&affidavibandCsubmissions, there are no sufficient materials?fprthis Court to-rely in support of this argument. For examplejfit is not even clear what kind of sickness was applicant sufferingwom^he^perioa^ of 2 years between 2014 and 2016. Without gooUarid^sufficient explanations into what befell the applicant>it would beMangerous for this Court to rely on his mere^#M|^is;^raUld^herwise set a bad precedent for every late cbmer to allege^that they were sick. For the above reasons, I find no^merit in this ground. Li 3 Hand irrtriand with the above ground, in the second ground, the applicant alleged that he was late in filing the appeal because of delays in obtaining certified copies of the decision of the tribunal. He alleged that the decision was made on 08th September, 2014 and certified copies were eventually supplied to him on 11th June, 2018. However, in his submissions the applicant admitted that certified copies of the decision of the tribunal were not a mandatory requirement for appeals emanating from the Ward tribunal. However, he pleaded that, being a lay person, he was not aware of that position of law. He argued that failure to comply with procedural rules should not be a ground to defeat the ends of justice. To support the position, he cited the case of Iron and Steel Wares LTD. vs. C.W Marry & CO. (1%|6)23 E.A.C.A 175 and Ramadhani Nyoni Vs. M/S Haule^ompany Advocates (1996} T.L.R 72. In Ramadhani Nvoni rsuerai^ittwa^feld^t^t: - machinery of justice, tries to get remedy procedural rules should not be used to defeatjustice. "[Emphasis mine] On his part the 3rd respondent argued that ignorance of law did not constitute a sufficient cause for granting an application for extension of time. He cited the case of Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No. 10 of 2015 where it was held that: "As has been held times out o f number; ignorance o f law has never featured as a good cause for extension o f time (see, for instance, the unreported ARS. Criminal Application No. 4 o f 2011 - Bariki Israel vs. The Republic; and MZA. Criminal Application No. 3*of2011 - Charles Salugi vs. The Republic.) " ^ Indeed, it is not a requirement^ law •that^t^appeal;>of from the decision of the tribunal must^be^sQ^porte^by a^copy of its decision on matters originati^^ f naI. Section 38

- (2) requires an aggrieved-^rs^lo^feis pSitii)n of appeal with the tribunal, under s. 38 f(3), the^tribunal liquid then dispatch that petition together vftth the re& d% f the proceedings in the Ward Tribunal and^tln^Distrtet Housing Tribunal to the High Court. From%he } above%naiysis it is clear that there is no requiremeritf|toattach or-v^ait for certified copies for the appellant to file hls^appeal^e fctet that the applicant is a lay person is not a justificati^^for^p4 year delay from 2014 to 2018. Apparently, ignorance of by the applicant is not an accuse to blatantly ignore the clear provision of the law for such a long period of time. As correctly pointed out by the respondent ignorance of law has never featured as a good cause for extension of time. That position also supported by the decision in Hadija Adamu vs. Godbless Tumba, Civil Application No. 14 of 2013 where it held that: "As regards the applicant's apparent ignorance o f law and its attendant rules o f procedure, I wish to

briefly observe that such ignorance has never been accepted as a sufficient reason or good cause for extension of time. "[Emphasis added]. For the foregoing reasons, I do not find merit in this ground as well, it is therefore dismissed. Lastly, the applicant alleged that the decision of the tribunal was marred by illegality. In its submissions the applicant alleged that it failed to consider the quorum of members of the Ward Tribunal. To support the argument he cited the case of The Principal Secretary Ministry of Defence and National Service* vs Diurah T.R. /Valambhia [1992] TLR 182; [[1 9 9 2] T ^ ^ 0 | J j i H y ^) ; 1992 TLR 185 (TZCA)]. I owe it to the law that, allegations of illegality must be considered on the basis or merits of each individual case. See Tanzania Harbors Authority vs Mohamed R. Mohamed, Civil Appeal No. 80 of 1999 (unreported). I am also aware that for an illegality to constitute a good and sufficient cause it must be apparent on the face of records not one that would be discovered by long drawn argument or process. See Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil 8 Application No. 2 of 2010, CAT (unreported). In light of the foregoing reasons I find that this ground is not merited, and it is therefore dismissed. For the foregoing reasons, I find that the applicant has failed to present good and sufficient reasons for this Court to exercise its discretion. The application lacks merit and it is dismissed without costs. It is so ordered. DATED at DAR ES SALAAM this 31st day of MARCH, 2021. JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/246242/source_file/ahmada-salum-kindamba-vs-musa-njengo-and-others-2021-tzhclandd-136-31-march-2021.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/ahmada-salum-kindamba-extensionof-time-tanzlii-2021>

Prepared on 26 October 2026 · Esheria